

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Petition for Declaratory Ruling that)	
AT&T's Phone-to-Phone IP Telephony)	WC Docket No. 02-361
Services Are Exempt from Access Charges)	

To: Chief, Wireline Competition Bureau

**REPLY COMMENTS OF
ISP/VOIP COALITION**

The ISP/VoIP Coalition ("Coalition"), by its attorneys and pursuant to Public Notice, DA 02-3184, released November 18, 2002, hereby submits its Reply Comments in the captioned proceeding. The Coalition is made up of various Internet Service Providers ("ISPs") to homes and businesses. Coalition members offer internet access and associated enhanced services, such as e-mail, initially by means of dial-up modem or digital subscriber line modem. As an ancillary part of this ISP service, Coalition members offer Voice over Internet Protocol ("VoIP") to their ISP subscribers. VoIP is a bundled part of the larger service offering and is not available on any stand-alone basis.

As discussed below, the Coalition agrees in general with AT&T that, depending upon the factual circumstances, it is either premature or wrong to impose access charges upon VoIP traffic, and that incumbent local exchange carriers ("ILECs") should be prohibited from engaging in self-help tactics that conflict with federal policy. Alternatively, to the extent that this Commission feels compelled to impose access charges upon some types of VoIP as might be deemed a "telecommunications" service, the Commission should also distinguish between such types of VoIP and other,

differently configured VoIP services that manifestly are not traditional telecommunications service, but information or enhanced service. As to types of VoIP services that are information or enhanced service, the Commission should confirm that they are not now and will not become subject to ILEC access charges.

How Coalition ISP Traffic Is Handled

The VoIP traffic portion of the ISP service package of Coalition members travels from the subscriber's phone, using a local calling number, to the local ILEC central office, and from there to a competitive local exchange carrier ("CLEC") and then through a CLEC direct inward dial ("DID") line to the Coalition member's internet gateway.¹ The content is there converted to IP packets. From there it travels over the public internet to the Coalition member's termination gateway where the IP packets are converted to voice, then via a CLEC direct outward dial ("DOD") line to a CLEC switch, from there to a ILEC central office and then to the termination number. At no time are the facilities of any ILEC long distance access tandem switch used, either for origination or termination of any call.²

VoIP calls can be initiated only from the subscriber's designated telephone number registered with its ISP as the number which will initiate dial-up internet service when the subscriber desires to go online and surf the internet. The ISP's system blocks any attempts to initiate calls from other telephone number.

¹ Each ISP in the Coalition owns its own network gateways. However, unlike AT&T or Worldcom, no Coalition member owns or operates its own internet backbone or long distance network.

² In rare cases, where a call is to a rural area beyond the Coalition member's gateway, it would be handed off to an unaffiliated IXC for completion. Presumably, that IXC is using a terminating ILEC's access tandem switch and paying a termination access charge today on such a call.

Thus, the system configuration of the Coalition's ISP members differs from that of AT&T in several respects, including: that each Coalition member's service offering is truly ancillary to ISP services, does not resemble (in the eyes of the consumer) traditional circuit-switched long distance voice telephone service, does not avail itself of Feature Group D services provided by ILECs, and does not use any ILEC long distance access tandem switching facility.

DISCUSSION

I. It Is Premature to Allow ILECs to Treat Any VoIP as Subject to Access Charges

The Coalition agrees with AT&T that it is premature to allow ILECs to impose access charges upon any form of VoIP, and nothing in the various comments justifies imposition of such charges now or in the near future. For example, although it is claimed that the grant of the AT&T Petition "would destroy the jurisdictional ratemaking process and the NECA Pool," *e.g.*, Comments of Fred Williamson & Associates, Inc. ("FWA") p.10, such a claim is a mere scare tactic. According to FWA and other opponents of the AT&T Petition, AT&T is only seeking legal cover for activities in which AT&T and other interexchange carriers ("IXCs") are already engaging. But if they are already doing it, and the jurisdictional ratemaking process and NECA Pool have not been destroyed already, then preserving the *status quo* (which is all AT&T requests) will not "destroy" anything. Inherently it is changing the *status quo* that holds the potential for destruction.

The Commission's 1998 *Universal Service Report* to Congress, which first ruled that VoIP would be exempt from access charges so long as it remained in an infant stage, is now over four years old. Nevertheless, AT&T reported that VoIP still represents only 1%-to-5% of overall long distance voice traffic (AT&T Petition, p.4), so there has been

no massive rush to “arbitrage” this cost advantage – by AT&T or anyone else. The obvious reason for this absence of arbitrage is precisely the reason given by the Commission for temporarily exempting VoIP in the first place: VoIP is a service inextricably linked to the overall development of the internet.

Additionally, the grant of the AT&T Petition will not forever bar the imposition of access charges on VoIP traffic. Even AT&T understands that the issue may have to be revisited as the development of the internet and the evolution of telephony in general continue. Fortuitously, the Commission has and will have opportunities to reassess the situation as required. In particular, the Commission’s biennial rule review process will facilitate periodic and regular reviews of this situation, and provide a vehicle for expeditiously amending the rules if future developments so mandate.

II. If, *Arguendo*, Some VoIP Traffic Is Deemed Subject to Access Charges, Then Non-“1+” VoIP Traffic Should Be Deemed Information/Enhanced Service

As the various comments reflect, there are different forms of VoIP, and even if some were deemed to be telecommunications service subject to access charges, others would be deemed information or enhanced services, exempt from access charges.³ Some commenters opposing the AT&T Petition suggest that the line between telecommunications-type VoIP and enhanced/information-type VoIP must be drawn to encompass all phone-to-phone VoIP as telecommunications service, and subject to access charges.⁴

The Coalition believes that based upon the evolution of the industry since the issuance of the 1998 *Universal Service Report*, that is not the appropriate place to draw

³ See, e.g., Comments of Sprint Corporation, p.3, n.3.

any lines. The mere fact that a call is phone-to-phone, rather than computer-to-phone or computer-to-computer, should not be dispositive.

Rather, if distinctions are in order, they should be based upon such factors as the relative burden that different types of VoIP impose upon the public switched telephone network, whether the involved VoIP is ancillary to a larger, bundled IP service or is a stand-alone service, and whether the service appears to the consumer to be an enhanced service or plain old telephone service.

Thus, for example, AT&T's VoIP traffic apparently utilizes the ILEC's Feature Group D service offering, in order for AT&T to be able to make it appear to the consumer as ordinary "1+" long distance dialing. As a result, not only does the consumer view the AT&T offering as plain old long distance telephone service, but AT&T is making use of the ILEC's long distance access tandem switch for call origination.

In contrast, the Coalition members each bundle VoIP into a larger ISP service offering, of which voice is only an ancillary part, not even available for separate purchase by the consumer. None of the Coalition members offers any 1+ dialing, and the Coalition members' VoIP traffic makes no use of any ILEC long distance access tandem switch. Accordingly, it would be irrational and confiscatory to force Coalition members to pay access charges to cover the ILECs' costs of owning and operating access switches that the Coalition members neither use nor need, especially when they are providing an enhanced service as part of their internet service offerings.

III. ILEC Access Charges Remain Unfairly and Excessively High

⁴ See, e.g., Comments of New York State Department of Public Service ("NYDPC"), pp.3-4.

A number of commenters argue that ILEC access charges are no longer unfairly or excessively high, as they once were, and that in any event, the remedy for high charges is to participate in rate-making proceedings.⁵ Those arguments are without merit. Access charges remain excessively high, and cannot be made reasonable through any rate-making process in the near term. Therefore, access charges should not be imposed upon any VoIP traffic unless and until the problem of ILEC gouging through excessive access charges has been eliminated.

It is said that interstate access charges have been reduced over time to “approximately one-half of a cent.” FWA Comments, p.12. The Coalition does not concede that this level is reasonable; but even if it were, it is only part of the analysis. Especially in the most populous states, huge amounts of long distance traffic are intrastate in nature, and nobody claims any concomitant reduction in intrastate access charges, which are typically eight to ten times as high as interstate access charges. These are the rates that an unregulated monopolist charges.

Nor is it rational to argue that out-of-state ISPs have any chance whatsoever for a fair hearing before the state public utility commissions that routinely approve these outrageous intrastate access charges. It is the local ILECs that employ numerous people in-state, that make political contributions at the local level, and that weigh in so heavily on the appointment of state public utility commissioners. The overwhelming disparity between intrastate and interstate access charges is, by itself, sufficient proof of the failure of the rate-making process at the state level.

⁵ See, e.g., FWA Comments, pp.12-13.

This Commission should not put the future of the internet and IP technology into the hands of various state commissions, who have different agendas and who are not charged with implementing national policies. Rather, this Commission should postpone the imposition of access charges upon non-enhanced VoIP until after access charges, intrastate as well as interstate, have been lowered to reasonable levels reflecting the costs (including a fair return to the ILEC) of providing access.

CONCLUSION

Much VoIP long distance traffic, including that carried by the members of the ISP/VoIP Coalition, makes only the most limited use of the ILEC bottleneck facilities. Much VoIP traffic, including much so-called “phone-to-phone” VoIP, makes absolutely no use of ILEC long distance access tandem switching facilities, and should not have to pay access charges imposed to cover the cost of such switching facilities.

Much VoIP traffic is ancillary to and inextricably bundled with other, non-voice internet services, and thus constitutes enhanced or information services, especially where it does not involve 1+ dialing and therefore does not appear to the consumer to be plain old long distance telephone service.

AT&T is correct. It is premature at this time to treat any type of VoIP as being subject to ILEC access charges. Granting the AT&T Petition would merely preserve the *status quo*, and thus could not possibly destroy the *status quo*, notwithstanding the hand-wringing of AT&T’s opponents. Through the regular biennial review process, the Commission has a vehicle for timely changing the *status quo*, if future developments so warrant. Unless and until the Commission decides that a change is appropriate, AT&T

and those who provide ISP services are entitled to protection against ILEC “self-help” designed to frustrate Commission policies.

If and when the Commission were to decide to change the *status quo*, the Commission should continue to treat most VoIP traffic as enhanced or information service, exempt from ILEC access charges. Specifically, VoIP traffic that is not 1+, does not utilize the ILECs' Feature Group D Access, that in fact does not utilize the ILEC access switch at all, should not be treated as a telecommunications service. This is so whether the involved traffic is phone-to-phone or computer-to-phone.

Finally, the Commission should continue to refrain from allowing ILECs to impose access charges unless and until access charges come down from the current unregulated monopoly levels. Without regard to the current pricing of interstate long distance access, there is a huge volume of long distance traffic which remains intrastate, and which remains outrageously priced. This Commission should avoid enabling state commissions to dictate federal policy toward the development and functioning of the internet by means of lopsided intrastate access charges.

Respectfully submitted,
ISP/VoIP COALITION

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Brown Nietert & Kaufman, Chartered
2000 L Street NW, Suite 817
Washington, DC 20036
(202)-887-0600
david@bnkcomlaw.com

By: /s/
David J. Kaufman, Its Attorney

807/FCC/Reply Comments re AT&T